

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

**ATLANTIC STATES INSURANCE
COMPANY as subrogee of GFP
CEMENT CONTRACTORS, LLC,**

*

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Plaintiff,

*

v.

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Case No.: 2:24-cv-613

**COMMERCIAL READY MIX
PRODUCTS, INC.**

*

*

and

*

GARRY O. SMALLEY,

*

Defendants.

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* * * * *

COMPLAINT

COMES NOW Atlantic States Insurance Company ("ASIC") as subrogee of GFP Cement Contractors, by counsel, and files this Complaint against Garry O. Smalley and Commercial Ready Mix Products, Inc., and for cause states as follows:

PARTIES

1. ASIC is an insurance company incorporated under the laws of Pennsylvania and with a principal place of business at 1195 River Road, Marietta, Pennsylvania 17547.

2. ASIC insured GFP Cement Contractors, LLC pursuant to a liability insurance contract at all times relevant to this matter.

3. GFP Cement Contractors, LLC (“GFP”) is a Delaware limited liability company with a principal place of business at 14 Hadco Road, Wilmington, Delaware 19804.

4. Commercial Ready Mix Products (“CRMP”) is a North Carolina stock corporation with a principal place of business at 115 U.S. Highway 158 West, Winton, North Carolina 27986.

5. Upon information and belief, Garry O. Smalley was an employee of CRMP at all relevant times hereto, and is a citizen of Virginia.

JURISDICTION

6. This Court has jurisdiction under 28 U.S.C. § 1332 because complete diversity exists between Plaintiff and Defendants and because the amount in controversy exceeds \$75,000.

7. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in this District.

FACTS COMMON TO ALL COUNTS OF THE COMPLAINT

8. On or about January 5, 2017, GFP entered into a Master Services Agreement with Consolidated, LLC to provide concrete work at various projects undertaken by Consolidated.

9. On or about March 9, 2022, Kinder Morgan Virginia Liquids Terminals, LLC and Consolidated, LLC entered into a contract for construction services at the property located at 502 Hill Street, Chesapeake, Virginia.

10. Pursuant to the Master Services Agreement, Consolidated, LLC subcontracted the concrete work for the Kinder Morgan job to GFP.

11. On or about March 18, 2022, GFP subcontracted with CRMP to supply and deliver concrete to the Property.

12. On March 25, 2022, while delivering concrete to the Property, Defendant Smalley operated a CMRP truck in a negligent manner such that the truck he was operating left the road, rolled over, and damaged a pipeline owned by Kinder Morgan.

13. Pursuant to the terms of their contract, Kinder Morgan made a demand upon Consolidated, LLC in the sum of \$160,131.86 for the costs to repair the damage to its property.

14. Consolidated, LLC accepted the demand and delivered payment to Kinder Morgan.

15. Consolidated, LLC, in turn, brought suit in Delaware Superior Court against GFP and ASIC, its insurer, to recoup the sums it paid Kinder Morgan plus attorney's fees.

16. Due, in large part, to the increasing attorney's fees, GFP and ASIC elected to settle Consolidated, LLC's claim in the amount of \$211,105.62 (the "Settlement").

**COUNT I – INDEMNITY
Against All Defendants**

17. Plaintiff incorporates by reference the allegations of the foregoing paragraphs as if fully recited herein.

18. Plaintiff denies any liability in connection with the events described above and the resulting damage to the Property.

19. Defendant CRMP and Defendant Smalley owed a duty to perform their work in a good and workmanlike, competent, and reasonable manner and take reasonable steps to prevent damage to the Property.

20. Defendants breached this duty.

21. The negligent acts and omissions of Defendants were the independent, active, primary, superseding, and intervening cause of any and all such damages to the Property. The breach of these duties via the actions and/or omissions set forth above is the cause of any and all such damage to the Property.

22. As a result of Defendants' breach, Plaintiff was obligated to pay for damages it did not cause.

23. Plaintiff is entitled to indemnification from the Defendants for all sums paid to satisfy their debt.

**COUNT II - CONTRIBUTION
Against All Defendants**

24. Plaintiff incorporates by reference the allegations of the foregoing paragraphs as if fully recited herein.

25. Defendants are jointly and severally liable for the damages Plaintiff was obligated to pay by virtue of their own, independent negligence.

26. Plaintiff is then entitled to contribution from Defendants for a contributive share of any sum which may be adjudged due and owing from the Settlement.

WHEREFORE, Plaintiff prays this Court enter judgment against Commercial Ready Mix Products, Inc. and Garry O. Smalley, jointly and severally, in the amount of \$211,105.62 plus attorneys' fees, costs, and any other and further relief this Court deems appropriate.

Jury Trial Demanded.

**ATLANTIC STATES INSURANCE
COMPANY as subrogee of GFP
CEMENT CONTRACTORS, LLC**

By Counsel



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